

ROAD IMPACT FEE CREDIT AGREEMENT

This **ROAD IMPACT FEE CREDIT AGREEMENT** (this “Agreement”) is made and entered into as of the _____ day of June, 2016, by and between the City of Westfield, Indiana, (the “City”) and Timberstone Development LLC (“Timberstone”) and Langston Residential Development LLC (“Langston”) (collectively, the “Developer(s)”) as follows:

WHEREAS, the City desires to assist development and integrate improvements of complementary right-of-way infrastructure collaboratively with the development community;

WHEREAS, the development community desires to assist the City in its efforts to improve the Westfield road network and associated infrastructure;

WHEREAS, the City has adopted the Westfield-Washington Township Comprehensive Plan which provides for the future development and expansion of certain roadways within the City’s planning and zoning jurisdiction (the “Thoroughfare Plan”);

WHEREAS, the Developers are required to dedicate right-of-way and provide connectivity of streets with existing or planned streets with adjacent properties pursuant to the Westfield-Washington Township Unified Development Ordinance (the “Unified Development Ordinance”) and the Thoroughfare Plan;

WHEREAS, Langston intends to develop a residential subdivision, as more particularly described in the attached **Exhibit A** (“Lakes of Westfield”);

WHEREAS, Timberstone intends to develop a residential subdivision, as more particularly described in the attached **Exhibit B** (“Sheffield Park”);

WHEREAS, as part of the development of the Lakes of Westfield and Sheffield Park, the City required the connection of the two subdivisions with the construction of Hawks Creek Way, as graphically depicted in the attached **Exhibit C** (“Hawks Creek Way”);

WHEREAS, as part of the development of the Lakes of Westfield and Sheffield Park, road impact fees are required to be paid to the City in accordance with City Ordinance 12-13;

WHEREAS, the Developers desire to accommodate the City’s plans for connectivity and the construction of Hawks Creek Way consistent with the City’s Unified Development Ordinance and Thoroughfare Plan, as amended, in exchange for road impact fee credits (“RIF Credits”).

NOW THEREFORE, in consideration of the foregoing and of mutual covenants and agreements herein contained, and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1) Hawks Creek Way.

- a) Langston shall, at its sole expense, design and construct a portion of Hawks Crest Way, as graphically depicted in the attached **Exhibit D** ("North Portion"). Prior to construction of the North Portion, Langston shall provide construction plans to the City for review and approval. Construction of the North Portion by Langston shall be subject to any applicable permits, financial guarantees and inspections by the City.
- b) Timberstone shall, at its sole expense, design and construct a portion of Hawks Crest Way, as graphically depicted in the attached **Exhibit E** ("South Portion"). Prior to construction of the South Portion, Timberstone shall provide construction plans to the City for review and approval. Construction of the South Portion by Timberstone shall be subject to any applicable permits, financial guarantees and inspections by the City.
- c) Developers agree to dedicate as right-of-way, at no cost to the City, Hawks Creek Way (the "Right-of-Way"). Such dedication shall occur at the time portions of the Lakes of Westfield and Sheffield Park that contain Hawks Creek Way receive secondary plat approval. The Developers shall bear the costs of preparing such dedication documentation as part of preparing such secondary plat(s).

2) Road Impact Fee Credits.

- a) Developers have prepared and submitted an estimated cost and value for the acquisition of the Right-of-Way and construction of Hawks Creek Way, attached hereto as **Exhibit F** (the "Cost of Improvements").
- b) North Portion: In consideration for the dedication and construction of the North Portion, the City agrees to issue an RIF Credit to Langston in the amount of _____ dollars (\$_____). Such credits shall only be applicable to single family dwelling units within the Lakes of Westfield and may be used and applied by Langston or its assignees as a credit against road impact fees payable to the City in connection with the construction of a single family dwelling unit in the Lakes of Westfield.
- c) South Portion: In consideration for the dedication and construction of the South Portion, the City agrees to issue an RIF Credit to Timberstone in the amount of _____ dollars (\$_____). Such credits shall only be applicable to single family dwelling units within Sheffield Park and may be used and applied by Timberstone or its assignees as a credit against road impact fees payable to the City in connection with the construction of a single family dwelling unit in Sheffield Park.

3) Conditions Precedent to Obligations. The obligations of City and Developers contained in this Agreement are expressly conditioned upon the enactment and approval of the secondary plat(s) and construction plans of the Lakes of Westfield and Sheffield Park, the acquisition of the North Portion and South Portion by the Developers, or its successors and assigns and, absent the occurrence of all of the foregoing conditions, this Agreement shall be null and void and the parties shall have no further responsibility or obligation to each other under this Agreement.

4) Authority. Each undersigned person signing certifies that (a) he has had ample time and opportunity to research, consult with experts and investigate all aspects of this Agreement, (b) that no information has been withheld from the other Party, (c) he is fully empowered

and duly authorized by any and all necessary action or consent to execute and deliver this Agreement for and on behalf of the party for which he signs, (d) that the party for which he signs has full capacity, power, and authority to carry out and enter into the obligations under this Agreement, and (e) that this Agreement has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding obligation of the party for which he signs.

- 5) Remedies. In the event of either the City's or Developers' failure to perform any of its obligations hereunder, the other party shall notify, in writing, the non-performing party of such default. If the non-performing party is unable to cure such default within thirty (30) days, then the other party may pursue any remedy available at law or in equity. The substantially prevailing party in any litigation arising as a result of a default by a party hereto shall be entitled to recover costs of the action, including reasonable attorneys' fees. The Parties stipulate that the only appropriate venue shall be the Hamilton County Indiana Circuit or Superior courts. Developers waive any and all recourse should the City file a lien for all amounts due on the subject property still owned or controlled by the Developers should the Developers be in default of this Agreement.
- 6) Notices. Any notice, statement, demand, or other communication required or permitted to be given, rendered or made shall be addressed as indicated below:

If to City:

City of Westfield
Attn: Jeremy Lollar,
Director of Public Works
2706 East 171st Street
Westfield, Indiana 46074

With a copy to:

Kreig DeVault
Attn: Brian J. Zaiger
12800 N. Meridian Street, Suite 300
Carmel, Indiana 46032

If to Langston:

Langston Residential Development LLC
Attn: Jim Langston
1132 South Rangeline Road
Carmel, Indiana 46032

If to Timberstone:

Timberstone Development LLC
by Crest Management, its Manager
Attn: Steven Dunn
9210 North Meridian Street
Indianapolis, Indiana 46260

- 7) On June ____, 2016, the Westfield Board of Public Works and Safety authorized the Director of the Public Works Department to execute this Agreement.

This instrument was prepared by: Brian J. Zaiger, Esq. , Krieg Devault, LLP , (317) 238-6266.

I affirm under the penalties for perjury, that I have taken reasonable care to redact each and every Social Security number from this document, unless it is required by law. Brian J. Zaiger.

City of Westfield, Hamilton County, Indiana (“City”)

By: _____

Jeremy Lollar, Director

Public Works Department

Date: _____

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the above party, who having been duly sworn acknowledged the execution of the foregoing instrument.

SIGNATURE OF NOTARY PUBLIC

State of _____, County of _____, SS:

Subscribed and Sworn before me this ____ day of _____, 20__.

Printed Name of Notary Public _____

My Commission Expires _____

[Remainder of page intentionally left blank; signature page follows.]

Langston Residential Development LLC (“Langston”)

By: _____
Jim Langston, President

Date: _____

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the above party, who having been duly sworn acknowledged the execution of the foregoing instrument.

SIGNATURE OF NOTARY PUBLIC

State of _____, County of _____, SS:

Subscribed and Sworn before me this ____ day of _____, 20__.

Printed Name of Notary Public _____

My Commission Expires _____

[Remainder of page intentionally left blank; signature page follows.]

Timberstone Development LLC (“Timberstone”)

By: Crest Management, Its Manager

By: _____
Steven M. Dunn, Vice President

Date: _____

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the above party, who having been duly sworn acknowledged the execution of the foregoing instrument.

SIGNATURE OF NOTARY PUBLIC

State of _____, County of _____, SS:

Subscribed and Sworn before me this ____ day of _____, 20__.

Printed Name of Notary Public _____

My Commission Expires _____

[Remainder of page intentionally left blank.]

EXHIBIT A
LAKES OF WESTFIELD
(COLLECTIVELY, LAKES OF GRASSY BRANCH AND LAKES OF SHADY NOOK)

A part of the Northwest Quarter of Section 32, Township 19 North, Range 4 East, located in Washington Township, Hamilton County, Indiana, being described as follows:

Beginning at the Southeast corner of said Quarter Section; thence North 89 degrees 53 minutes 46 seconds West along the South line of said Quarter Section 2,647.32 feet to the Southwest corner of said Quarter Section; thence North 00 degrees 19 minutes 20 seconds East along the West line of said Quarter Section 2,681.38 feet to the Northwest corner of said Quarter Section; thence South 89 degrees 40 minutes 39 seconds East along the north line thereof a distance of 1832.88 feet to the Northeast corner of the Northwest quarter of said Quarter Section; thence South 00 degrees 19 minutes 21 seconds West along the east line of thereof a distance of 1226.26 feet; thence South 89 degrees 39 minutes 38 seconds East 814.87 feet to the East line of said Quarter Section; thence South 00 degrees 20 minutes 22 seconds West along said East line 1,444.78 feet to the POINT OF BEGINNING of this description containing 139.728 acres, more or less. Subject to all legal highways, rights-of-ways, Easements, and restrictions of record.

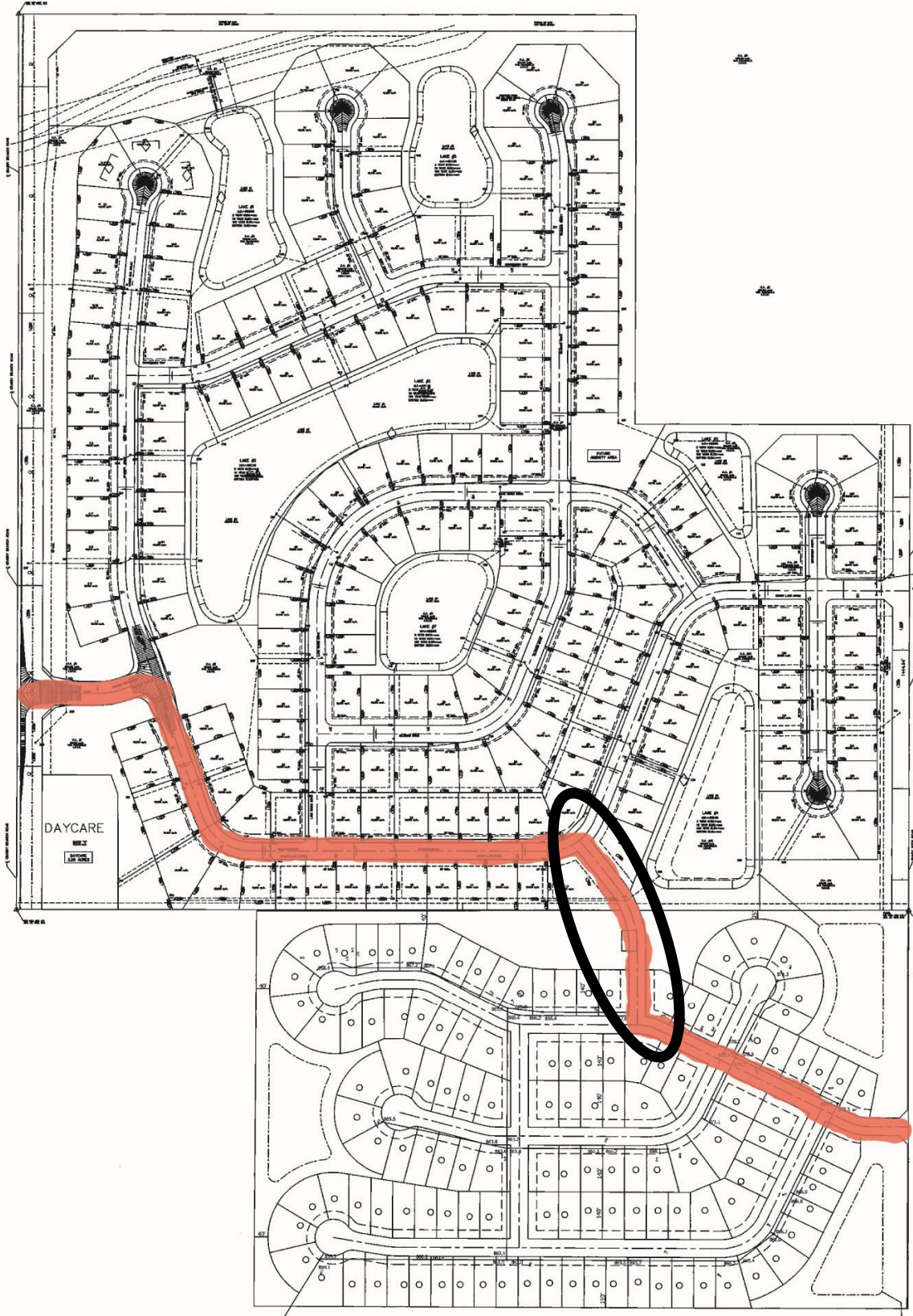
EXHIBIT B
SHEFFIELD PARK

A part of the Southwest Quarter of Section 32, Township 19 North, Range 4 East, in Washington Township, Hamilton County, Indiana, more particularly described as follows:

Beginning at the Northeast corner of said Quarter Section; thence South along the East line thereof a distance of 1,190 feet; thence West a distance of 1,940 feet to a point on the East property line of Grassy Knoll Subdivision; thence North along said East line of Grassy Knoll Subdivision a distance of 1,190 feet to a point on the North line of said Quarter Section; thence East along said North line a distance of 1,940 feet to the place of beginning, containing 53.0 acres more or less.

This legal description is for zoning purposes only and subject to change upon the completion of a boundary survey.

EXHIBIT C
HAWKS CREEK WAY



The image shows a complex site development plan for a residential or commercial project. The central feature is "LAKE 04". To its left are several rectangular lots, some labeled "LOT 1" through "LOT 10". To the right of the lake is a larger area with more irregular lot boundaries and labels like "LOT 11" through "LOT 15". Various roads and paths are shown, including "SHADY LAKE DRIVE" and "LAKE 04 DRIVE". There are numerous annotations, dimensions, and symbols throughout the plan. A prominent black oval is drawn around a section of the plan on the right side, near "LOT 11" and "LOT 12".

SOUTH PORTION

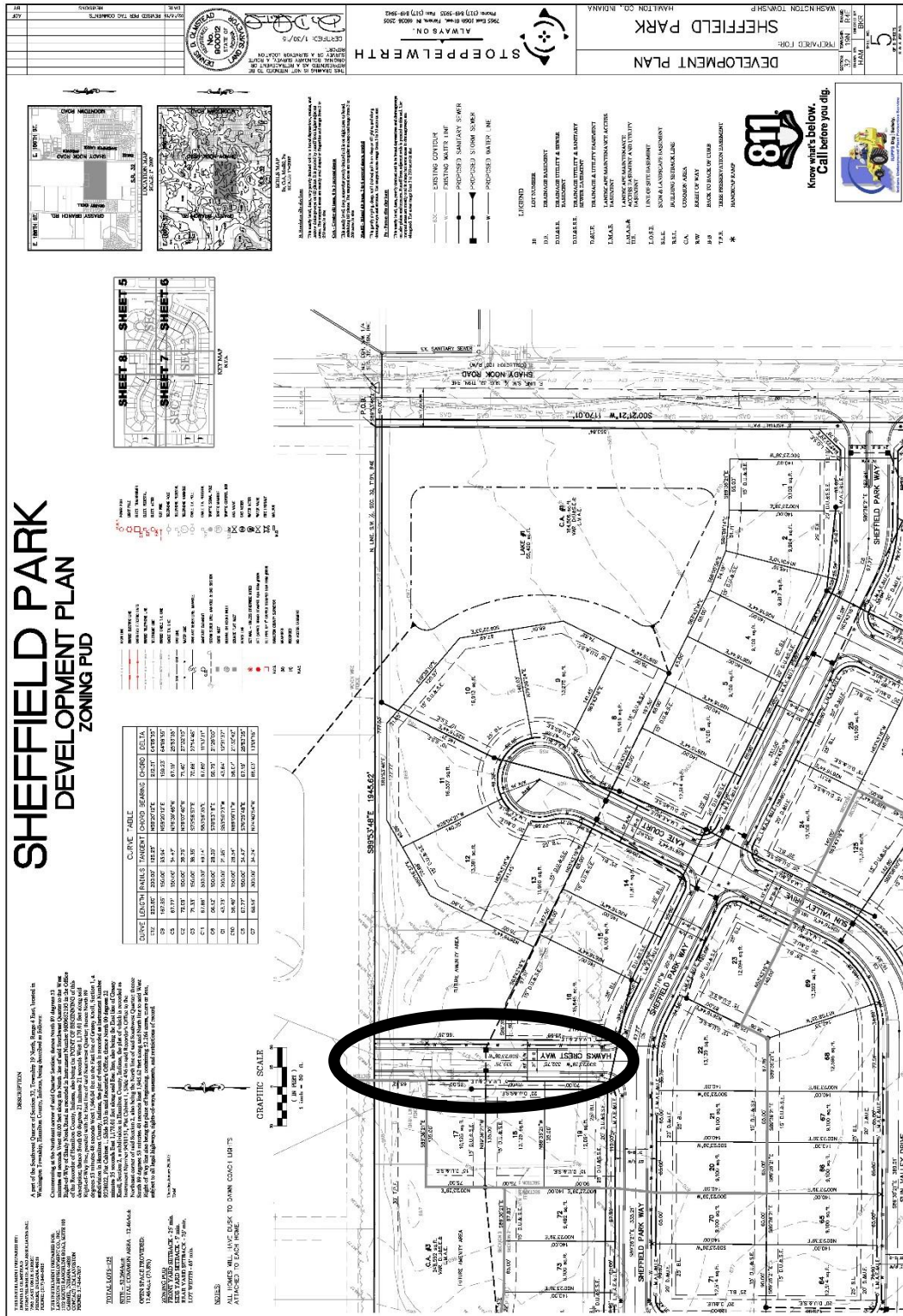


EXHIBIT F
COST OF IMPROVEMENTS

DRAFT